

In re Appln. of Cox et al.
Application No. 10/775,746
Response to Office Action of February 8, 2008

APPENDIX C
UNEXECUTED DECLARATION/AFFIDAVIT UNDER 37 C.F.R. §1.132
WITH NUMBERED PARAGRAPHS

CH01/ 22522133.1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT(S):	Cox et al.	DOCKET NO:	P2702US
SERIAL NO.:	10/775,746	ART UNIT:	3677
FILED:	February 10, 2004	EXAMINER:	William L. Miller
CONF. NO.:	1553		
TITLE:	Method for Customizing a Burial Vault Carapace		

**AFFIDAVIT UNDER 37 C.F.R. § 1.132
(Revised)**

I, Marty Jay Cox, a citizen of the United States of America residing at 5680 S. Bogey Drive, Polo, Illinois 61064, do hereby declare that:

1. I am a coinventor of the invention claimed in U.S. Patent Application No. 10/775,746.
2. Before I conceived of the invention claimed in the patent application, I was employed by Professional Graphics, Inc. as a pre-press and printing broker. I had no prior experience running a business, selling or marketing products or acting as an officer of a company. Christie Marie Cox, coinventor of the invention, was employed as a funeral director and embalmer. Mrs. Cox also had no prior experience running a business, selling or marketing products or acting as an officer of a company.
3. Mrs. Cox and I realized that the burial receptacle, such as a vault, is a cold and impersonal container into which the deceased is placed. We realized that the burial receptacle lacked continuity with the funeral, which is largely personalized with artifacts and pictures of the deceased and his or her family.
4. To solve this problem, Mrs. Cox and I conceived of the claimed invention, which in its commercial embodiment takes the unadorned receptacle, such as a burial vault or urn or other respository, and makes it appealing and personalized for each funeral and each deceased. It brings color and life through adornment to that which was once, plain and ordinary.
5. After we conceived of the claimed invention, Mrs. Cox and I worked from our home to develop the invention and founded our company Legacy Prints, Inc. I am the President of Legacy Prints and Mrs. Cox is the Secretary (co-owner). The company has four (4) employees.
6. In October 2003, we introduced our invention at the National Funeral Directors Association (NFDA) convention for all funeral directors nationwide. Wilbert Funeral Services, a leading vault manufacturer, deemed it a marketable product and wanted to sell it in the United States and Canada. We have been supplying products embodying our invention to Wilbert. This invention was the only one of its kind at the NFDA convention and we received very promising feedback on the invention.
7. The product that was originally supplied, continue to be supplied, and whose sales figures are provided below, embody the elements of at least claim 1 in the application (hereinafter, and for the purposes of this declaration only, "the invention", namely:

A carapace for a burial vault having a top surface, and attached to this top surface is a substrate having a decorative graphic; an adhesive interposed between the carapace and the substrate and adhering the substrate to the carapace, where the substrate is formed from a material selected from the group consisting of polyester, polypropylene, polyethylene, vinyl, acetate, acrylic, polystyrene and polycarbonate.

8. The following table illustrates the increasing gross sales and the increasing market share:

Sales Year	Sales Units	Burial Vault Market Sales	% Market
2003	3,583	1,752,834	0.002044%
2004	5,168	1,657,929	0.003117%
2005	5,748	1,653,129	0.003477%
2006	7,300	1,648,329	0.004429%

Table 1

9. These market share figures are based on the attached report Exhibit 6, entitled, “Projected vs Actual Death and Cremation Numbers” that was produced by the Cremation Association of North America (CANA) in 2005 (“the CANA Report”), which is the most recent report I was able to locate with such relevant data.

10. According to CANA’s web page (see Exhibit 7):

Founded in 1913, the Cremation Association of North America (CANA) is an International organization of over 1300 members, composed of cemeterians, cremationists, funeral directors, industry suppliers and consultants. CANA members believe that cremation is preparation for memorialization.

11. The number of burial vaults was determined by subtracting the number of cremations from the number of total deaths, which is an accurate method to estimate the burial vault sales.
12. Our information on sales units for the year 2007 was lost in a computer-related disk drive accident, and is therefore unavailable for inclusion in Table 1.
13. The CANA report provides actual cremation numbers for the years 2003 and 2004. Table 1 uses an estimate for based on a linear regression model based on actual values for year 2004, and projected values for 2010 in the CANA Report. Accordingly, the model used was ($y = mx + b$), where (for number of burial vault sales, which is total deaths minus cremations) $m = -4800$ and $b = 11,277,129$. A linear regressions model is a reasonable model to use in this time frame. The Cana Report and Table 1, in general, show a trend towards more cremations and less use of burial vaults.
14. Table 1 further shows a steadily increasing market share, despite the declining market for burial vaults.

15. These increased gross sales as well as increasing percentage of market share occurred despite the entry of competitors into this market.
16. Although I do not have direct evidence of copying of our invention by competitors (which would be exceptionally difficult for me to obtain under the present circumstances), I find the circumstantial evidence of copying to be compelling. No reasonable person could conclude that the sudden appearance of a rush of competitors producing a product encompassing the elements of the invention is mere coincidence.
17. Despite the fact that burial vaults have been used back into antiquity, until our introduction in the marketplace of the invention at the NFDA in October 2003, I was unaware of any sales of carapaces that comprised the invention.
18. One year later, in October 2004, I noticed at the NFDA convention that Doric Vaults had copied our invention and was selling it. Photographs from that convention and the Doric Vaults exhibit are attached hereto as Exhibit 1.
19. In the February 21, 2005, edition of *Newsweek*, our invention was covered in the Periscope section. *Newsweek* noted that, "Customizing burial vaults...has become a popular way to pay tribute...." A copy of the article is attached hereto as Exhibit 2. Ray Simon is an artist that create the artist design for the prints used in connection with the products we supply to Wilbert Funeral Services.
20. In October 2005, I noticed at the NFDA convention that Doric Vaults was still selling copies of our invention (see Exhibit 3). In addition, another company, Trigard, had started selling copies of our invention. Attached as Exhibit 4 is a copy of a recent Trigard website page indicating that they are now selling the invention as well. We have since learned that even monument companies are copying our invention.
21. The November 26, 2004 edition of the *Omaha World-Herald* noted in "Burial Vault Artwork Adds Personal Touch" that the invention was a "relatively new practice in the funeral industry" but that "most vault makers now offer the option." A copy of the article is attached hereto as Exhibit 5. This article, too, mentions that Ray Simon is the artist that designs the prints used on the products we supply to Wilbert Funeral Services. Exhibit 5.
22. In October 2006, Wilbert Funeral Services made the invention a "standard offering" on their vaults. This means that, within the next two years, every Wilbert distributor will be required to offer a selection of vaults the include the invention. In addition, Wilbert has changed the design of its lowering mechanisms so that the mourners can better see at the graveside the personalization of burial receptacles such as vaults.
23. The fact that our competitors (see, e.g., Exhibit 4) are advertizing the features claimed in our invention (topside decorative appliqué for the burial vault) strongly suggests that the commercial success flows from the functions and advantages as disclosed in the specification and is derived from the claimed invention.
24. The tremendous commercial success of our product can be seen by the substantially increasing units sold over the years along with a greater market share, the copying of our product as time went on, Wilbert making the invention a standard offering and the

changing, by Wilbert, of its design for lowering mechanisms to better accommodate the invention.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Marty Jay Cox

Date: _____

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